

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-4151

To be argued by: Anna M. Durbin

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-4151

REYES FRIAS DELEON,

Petitioner,

-VS-

IMMIGRATION AND NATURALIZATION SERVICE,

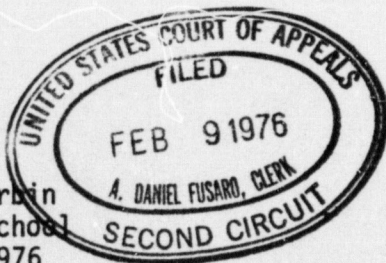
Respondent.

ON PETITION FOR REVIEW FROM
THE BOARD OF IMMIGRATION APPEALS

APPENDIX

On the brief:

Anna M. Durbin
Yale Law School
Class of 1976



Judith M. Mears
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New Haven, Connecticut 06520

Michael J. Churgin
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Austin, Texas 78705

Attorneys for Petitioner

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P/S

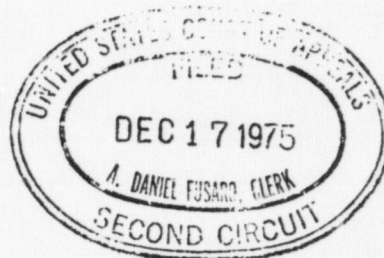
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TABLE OF CONTENTS

Relevant Docket Entries (Index to Administrative Record)	i
	Adm. Rec. No. (Tab)
Superseding Order to Show Cause (August 26, 1974)	24
Motion to Dismiss Deportation Proceedings With Prejudice Pursuant to §241(f) of the Act	18
Certified Identification Documents in Support of §241(f) Application	19
Application for Withholding of Deportation Pursuant to §243(h) of the Act	16
Transcript of Deportation Hearing (October 10, 1974)	21
Indictment of Reyes Deleon Frias (August 27, 1968) (Exhibit 2 in Deportation Hearing)	23
Letter to Department of State from James E. Smith, District Director, Hartford I.N.S.	15
Transcript of Continued Deportation Hearing (November 21, 1974)	14
Letter to I.N.S. from Department of State	13
Transcript of Continued Deportation Hearing December 20, 1974)	12
Decision of the Immigration Judge	11
Transcript of Oral Argument Before the B.I.A.	5
Brief of Respondent Before the B.I.A.	4
Decision of the B.I.A.	3

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



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REYES FRIAS DELEON,

Petitioner, :

- v -

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent. :

: PETITION FOR REVIEW OF
ADMINISTRATIVE AGENCY
ACTION

: Docket No. 75-4151

----- -x

INDEX TO ADMINISTRATIVE RECORD

1. Notice of entry of appearance as attorney dated February 26, 1975.
2. Warrant of deportation dated July 24, 1975.
3. Decision of the Board of Immigration Appeals dated July 10, 1975.
4. Alien's brief on appeal to Board of Immigration Appeals.
5. Transcript of oral argument dated February 26, 1975.
6. Memo for file dated February 18, 1975.
7. Memo for file by P.C. Vincent dated February 14, 1975.

75-4151

8. Notice of appeal to the Board of Immigration Appeals dated January 2, 1975.

9. Application to proceed in forma pauperis dated December 30, 1974.

10. Notice of appeal to the Board of Immigration Appeals dated December 30, 1974.

11. Decision of the Immigration Judge dated December 20, 1974.

12. Transcript of deportation hearing held December 20, 1974.

13. Letter to Immigration and Naturalization Service from Department of State dated December 13, 1974.

14. Transcript of continued hearing dated November 21, 1974.

15. Letter to Department of State from District Director, Hartford, Connecticut.

16. Application for withholding of deportation pursuant to Section 243(h) dated September 10, 1974 (marked as Exhibit 4 in deportation hearing).

17. Request to proceed in forma pauperis dated September 10, 1974.

18. Motion to dismiss deportation proceedings with prejudice (marked as Exhibit 3 in deportation hearing).

19. Certified identification documents from Bureau of Vital Records.

20. Memorandum in support of motion to dismiss pursuant to Section 241F of the Immigration and Nationality Act.

21. Transcript of deportation hearing held
October 10, 1974.

22. Immigration Judge's worksheet.

23. Transcript of conviction dated September
4, 1973 (marked as Exhibit 2 in deportation hearing).

24. Superceding order to show cause dated
August 26, 1974 (marked as Exhibit 1 in deportation hearing).

25. Order to show cause dated July 17, 1973
(marked as Exhibit 1A in deportation hearing).

Respectfully submitted,

THOMAS J. CAHILL,
United States Attorney for the
Southern District of New York,
Attorney for Respondent.

MARY P. MAGUIRE,
Special Assistant United States Attorney,
Of Counsel.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. ALB 906 783

Respondent.

In the Matter of

FRANK-WE LION; aka ANSEL SANJURJO; aka ANGEL MANUEL SANJURJO; aka RAFAEL
s/o Federal Correctional Institution, Danbury, Connecticut
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of the Dominican Republic
and a citizen of the Dominican Republic;
3. You entered the United States at Chaplain, New York on
November 1, 1972;
(date)
4. You were on September 4, 1973, convicted in the United States District Court for the Eastern District of New York of attempting to evade the Immigration laws of the United States by impersonation and appearing under an assumed name in violation of Title 18, United States Code, Section 1546;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, you have been convicted under section 1546 of title 18 of the United States Code.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at the Federal Correctional Institution, Danbury, Connecticut on Tuesday, Sept. 18, 1974 at 2:30 Pm, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: August 28, 1974

THIS ORDER TO SHOW CAUSE AND NOTICE OF HEARING WAS SERVED ON THE RESPONDENT BY MAIL AT DANBURY, CONNECTICUT, ON JULY 27, 1973.

James E. Smith
(Signature)
DEPT. OF JUSTICE
DANBURY, CONNECTICUT
(City and State)

EXHIBIT 1

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

In the Matter of
Reyes FRIAS DeLeon

File No. A18 806 758

MOTION TO DISMISS DEPORTATION PROCEEDINGS WITH PREJUDICE

Respondent by counsel respectfully moves for an order dismissing the above proceedings with prejudice in that Section 241f of the Immigration and Nationality Act precludes deportation.

Respondent is the spouse and father of United States citizens:

- a) Spouse - nee Ampano Ortiz, born Jersey City, New Jersey, July 20, 1949 (V.S. File No. 121912-C, Hudson County Bureau of Vital Statistics); married August 26, 1967.
- b) Child - Marian Frias, born New York, New York, June 7, 1968 (Birth No. 156-68-117299, Department of Health, New York City).
- c) Child - Reyes Frias, Jr., born New York, New York, February 2, 1973 (Birth No. 156-73-102844, Department of Health, New York City).

Respondent is a member of the class of "aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation" and was "an alien otherwise admissible at the time of entry." Respondent was inspected at time of entry.

18 WHEREFORE, respondent prays that these proceedings be
dismissed with prejudice.

The Respondent

By: /S/ MICHAEL J. CHURGIN
Michael J. Churgin
Dennis E. Curtis
His Attorneys
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210

BIRTH REGISTRATION CERTIFICATE

HUDSON COUNTY BUREAU OF VITAL STATISTICS

225 NEWARK AVENUE, ROOM 203
JERSEY CITY, NEW JERSEY

S. FILE NO. 121912-3

IN# 8009

NAME OF CHILD	SEX	PLACE OF BIRTH	DATE OF BIRTH
Amparo Ortiz	Female	Jersey City, N.J.	July 20, 1949

This is a true certification of name and birth facts as recorded in this office.

July 27, 1949

REGISTRATION DATE

August 9, 1973

DATE ISSUED

[Signature]
CERTIFYING CLERK'S SIGNATURE

[Signature]
REGISTERAR OF VITAL STATISTICS

STATE OF NEW JERSEY

Certificate of Marriage

THIS IS TO CERTIFY

That on the 26TH day of AUGUST

in the year of our Lord 1967

REYES FRIAS DE LEON

and

AMPARO ORTIZ

WERE BY ME UNITED IN

MARRIAGE

At 975 E. 163 ST. BRONX, N. Y.

according to the laws of NEW YORK STATE

Dorian V. Galante

WITNESSES

2460 24th Street

Brooklyn

CERTIFICATE OF BIRTH

2 PM 3:28

156-63-117199

DATE OF BIRTH: JUNE 7, 1963
TIME: 6:13

NAME: ANTONIO
LAST NAME: ANTONIO
FIRST NAME: ANTONIO
MIDDLE NAME: ANTONIO
SEX: M
RACE: W
RELIGION: C
MARRIAGE: N
EDUCATION: H
OCCUPATION: S
RESIDENCE: 632 EADEN ST.
CITY: NEW YORK
STATE: NY
ZIP: 10012

Print here the mailing address of mother.

Copy of this certificate will be mailed to her when it is filed with the Department of Health.

Signature: ANTONIO L. ANTONIO
Name: ANTONIO L. ANTONIO
Address: 632 EADEN ST.
City: NEW YORK
State: NY
Zip: 10012

ALL OF RECORDS AND STATISTICS DEPARTMENT OF HEALTH CITY OF NEW YORK

DEPARTMENT OF HEALTH
BUREAU OF VITAL RECORDS
CITY OF NEW YORK
This is a true and correct copy of the original as filed in the Department of Health. The Department of Health is not responsible for the accuracy of the facts herein as they are provided by law. This is a true and correct copy of the original as filed in the Department of Health. The Department of Health is not responsible for the accuracy of the facts herein as they are provided by law. This is a true and correct copy of the original as filed in the Department of Health. The Department of Health is not responsible for the accuracy of the facts herein as they are provided by law.

CITY OF NEW YORK

BUREAU OF VITAL RECORDS

DEPARTMENT OF HEALTH

AUG 3 1973

CERTIFICATE OF BIRTH

RECORDED
INDEXED
DEPARTMENT OF HEALTH
BUREAU OF VITAL RECORDS
CITY OF NEW YORK

FEB 6 9 24 AM '73

Birth No. 156-73-102844

FULL NAME OF CHILD REYES FRIAS JR		DATE OF BIRTH FEBRUARY 2, 1973		TIME OF BIRTH 1:50	
SEX MALE		PLACE OF BIRTH MANHATTAN		CITY, TOWN OR LOCATION OF BIRTH METROPOLITAN	
FATHER'S FULL NAME ANIBARDO ORTIZ		MOTHER'S FULL NAME REYES FRIAS		FATHER'S ADDRESS 23 JERSEY CITY N.J.	
FATHER'S ADDRESS N.Y. QUEENS EAST		MOTHER'S ADDRESS 34 SANTO DOMINGO		FATHER'S OCCUPATION YES 23-34 101ST.	

Date of Report **FEBRUARY 5, 1973**

Given name added from a supplemental report	Date of Birth

(Signed) **Alvin Morris**
Name of Signer **ALVIN MORRIS**
Address **METROPOLITAN HALL**

BUREAU OF RECORDS AND STATISTICS

DEPARTMENT OF HEALTH

THE CITY OF NEW YORK

Print here the mailing address of mother.
Copy of this certificate will be mailed to her when it is filed with the Department of Health.

Name **ANIBARDO FRIAS**
Address **23-34 101ST. APT. PH.**
City **QUEENS** State **NY** Zip **11367**

This is to certify that the foregoing is a true copy of a record in my custody.

Max Marcus
CITY REGISTRAR

The Department of Health does not certify to the truth of the statements made thereon, as no inquiry as to the facts has been provided by law.

DO NOT ACCEPT THIS TRANSCRIPT UNLESS THE RAISED SEAL OF THE DEPARTMENT OF HEALTH IS AFFIXED THEREON. REPRODUCTION OR ALTERATIONS ARE PROHIBITED BY LAW.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

In the Matter of
Reyes FRIAS DeLeon

File No. A18 896 758

Application for Withholding of Deportation As A Result Of Persecution Pursuant
to Section 243h of the Immigration and Nationality Act

State of Connecticut)
County of Fairfield) ss.: September 10, 1974 at Danbury, Connecticut

I, Reyes FRIAS DeLeon, being duly sworn, depose and say that I will be persecuted as a result of my political beliefs if I am deported to the Dominican Republic for the following reasons:

1. During 1960, 1961, and 1962, I played professional baseball in the United States and this fact was known to Dominican Republic population.

2. I supported the election of Juan Bosch to the presidency of the Dominican Republic, and he was inaugurated in 1963.

3. Seven months later, President Bosch was overthrown by a coup.

4. During the revolution to return President Bosch to power in 1965, I actively supported the Bosch forces in the Dominican Republic and served under the command of Colonel Francisco Caamaño Deno. I received a bullet wound in the head.

5. Following the suppression of the revolt, I managed to leave the Dominican Republic without being placed in custody.

6. In 1968 I returned to the Dominican Republic for fourteen days during which time I was harrassed by the police whenever I left my hotel room and was advised that I would face serious trouble if I remained in that country. I left the Dominican Republic and returned to the United States.

7. Supporters of President Bosch are continually harrassed in the Dominican Republic and are subject to summary execution.

16 8. On or about February 17, 1973, my commander, Col. Francisco Caamano Dero, was executed by Dominican police.

9. Were I to return to the Dominican Republic by deportation order, I believe I would be persecuted for my beliefs and would be killed.

/S/ REYES FRIAS DELEON

Sworn and subscribed to before
me this 10th day of September 1974.

MICHAEL J. CHURGIN
/S/ Commissioner of the Superior Court

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF

FILE A- 18 083 730 - N. Y.

Ruben Frito de Leon
- Respondent -

IN Deportation PROCEEDINGS

TRANSCRIPT OF HEARING

Before: **Francis J. Loun**, Immigration Judge

**Shawbury Federal Correctional
Institution, Shawbury, Conn.**

Date: **October 10, 1974**

Place:

Transcribed by **P. J. Killela** Recorded by **Gary Autograph**

Official Interpreter **Steve Miller**

Language **Spanish**

APPEARANCES:

For the Service:

Trial Attorney

Section

For the Respondent:

Michael J. Georgia, Esq.,

127 Wall Street

New Haven, Conn., 06500

1 IMMIGRATION JUDGE TO RESPONDENT (through official Spanish interpreter):

2 Q What is your name?

3 A Reyes Frias de Leon.

4 Q And Mr. Churgin is your attorney, right?

5 A Yes.

6 IMMIGRATION JUDGE: Mr. Churgin, are you ready?

7 MR. CHURGIN: Yes.

8 IMMIGRATION JUDGE TO RESPONDENT:

9 Q Mr. Frias, will you stand and raise your right hand. Do you solemnly
10 swear that all the testimony you will give in this proceeding will be
11 the truth, the whole truth, and nothing but the truth, so help you God?

12 A I do.

13 IMMIGRATION JUDGE: Mr. Churgin, on behalf of your client, do you concede
14 service of this superseding order to show cause, issued by the District
15 Director at Hartford, Connecticut dated August 26, 1974.

16 MR. CHURGIN: Yes.

17 IMMIGRATION JUDGE: There was another order I know, it was here when I first
18 had the case before me, but this supersedes that order. It is the same.
19 I don't believe there are any changes in it. The new date doesn't change
20 anything but I want it part of the record. The original order was dated
21 July 17, 1973 issued by the District Director at Detroit.

22 MR. CHURGIN: I have no objection as long as I have a copy for my records.

23 IMMIGRATION JUDGE: I will make the photocopy of the original order dated
24 July 17, 1973, as Exhibit A, and the superseding order dated August 26, 1974
25 will be Exhibit One. Agreeable?

26 MR. CHURGIN: Agreeable.

- 1 -
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

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IMMIGRATION JUDGE: And you concede service on your client of a copy of the superseding order dated August 26, 1974?

MR. CHURGIN: I do.

Q - IMMIGRATION JUDGE: Do you on behalf of your client, concede the truth of any or all of the allegations contained in the superseding order to show cause?

MR. CHURGIN: I do concede the truth of the allegations.

IMMIGRATION JUDGE: And do you concede deportability on the charge in that order?

MR. CHURGIN: I do not concede deportability and therefore I submit a motion to dismiss deportation proceedings in this case with prejudice because the respondent is applying under Section 241(f) of the Immigration and Nationality Act which waives deportability on the basis of fraud or misrepresentation when the alien is the parent or spouse of an American citizen.

IMMIGRATION JUDGE: All right. I will tell you that I will deny the motion in the course of my final decision, but I am not going to make a decision at this time. The government has certain administrative procedures to follow, and if they should arrive at a favorable decision in that area, you may then wish to withdraw the application under Section 243(h) at that point, because the two things are not necessarily co-equal. And if you don't choose to accept it or if you wish to withdraw the 243(h) at that point, but then I will make a determination on the record as far as deportability is concerned.

MR. CHURGIN: I definitely will not withdraw the 243(h).

IMMIGRATION JUDGE TO RESPONDENT:

- 2 -

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q If you have to be deported, you have the right to name the country
2 to which you would want to be sent. You cannot choose Canada, or Mex-
3 ico, or any of the islands in the Caribbean adjacent to the United States
4 unless you have been a citizen or resident of that country.

5 A I would want to stay here in United States where I have my wife and
6 my children.

7 Q That's another country you cannot name.

8 A The reason I can't go to Dominican Republic is because I was in the
9 revolution, there.

10 Q I understand. We'll go into that a little bit more later on. But
11 you have the right to name the country to which you should be sent if
12 deported. You don't have to name another country but if you do wish
13 to name another country, I am asking for it now.

14 IMMIGRATION JUDGE: I take it no country is being named? No selection?

15 MR. CHURGIN: That's right.

16 IMMIGRATION JUDGE: And the only application is for Section 243(h) in re
17 Santo Domingo?

18 MR. CHURGIN: Correct.

19 IMMIGRATION JUDGE: I will accept the application. The government has
20 just furnished me with a copy of the indictment relating to Mr. Frias.
21 Is there any objection to that being made part of the record?

22 MR. CHURGIN: No objection.

23 IMMIGRATION JUDGE: The indictment is marked Exhibit 2. Your motion to
24 dismiss the deportation proceedings is marked Exhibit 3. Application
25 for withholding of deportation under Section 243(h) is Exhibit 4, with
26 supporting memorandum. The originals and photostatic copies I have

- 2 -

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 examined and compared. I now return the originals.

2 MR. CHURGIN: Thank you, your honor.

3 IMMIGRATION JUDGE: The motion under Section 241(f) of the Immigration
4 and Nationality Act to dismiss proceedings in this case. The motion
5 is supported by photostatic copy of memorandum, which was compared, and
6 the original returned.

7 MR. CHURGIN: Thank you judge.

8 IMMIGRATION JUDGE: And your motion to dismiss is marked Exhibit 3.
9 Is that agreeable?

10 MR. CHURGIN: Agreeable.

11 IMMIGRATION JUDGE: Do you wish to examine him on the 243(h) application?

12 MR. CHURGIN: Yes.

13 IMMIGRATION JUDGE: Go ahead. That is the only application you are
14 making? I take it?

15 MR. CHURGIN: Yes.

16 IMMIGRATION JUDGE: All right, you want to question him, go ahead.

17 MR. CHURGIN TO RESPONDENT:

18 Q Do you recall reading this application?

19 A Yes.

20 Q Is that your signature there?

21 A Yes.

22 Q Do you remember reading this?

23 A Yes.

24 Q Is it all true?

25 A Yes.

26 IMMIGRATION JUDGE: Do you have anything else?

- 4 -

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. CHURCHIN: That is all.

2 IMMIGRATION JUDGE: So you would ask for an adjournment to consider
3 the applications, is that right?

4 TRIAL ATTORNEY: Right.

5 MR. CHURCHIN: Mr. Frias will be paroled to the Immigration Service on
6 October 28th. Are you going to be the same immigration judge employed
7 in this case?

8 IMMIGRATION JUDGE: I'll retain jurisdiction, yes. Where does he live?

9 MR. CHURCHIN: He lives in New York.

10 IMMIGRATION JUDGE: He lives in New York, fine, no problem. I'll be in
11 New York then.

12 I certify that to the best of my knowledge and belief the five pages
13 within numbered ONE thru FIVE is a complete and accurate transcript
14 of the within hearing.
15

16 Patrick J. Killela
17 Transcriber
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AUG 27 1968

UNITED STATES OF AMERICA

11:01 AM.
P.M.

INDICTMENT

227

- against -

REYES DELEON FRIAS,

Crim. No.
(T. 18, U.S.C. §1546)

Defendant.

X

THE GRAND JURY CHARGES:

On or about the 18th day of July 1968, at John F. Kennedy International Airport, Queens, New York, within the Eastern District of New York, the defendant REYES DELEON FRIAS, when applying for admission into the United States, impersonated one Rafael Lara Ortiz and attempted to evade the immigration laws of the United States by appearing under the assumed name of Rafael Lara Ortiz, without disclosing his true identity.
(Title 18, United States Code §1546)

Joseph J. Hoey
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

A TRUE BILL.

Arthur W. Ashley
FOREMAN.

October 10, 1972

Office of Refugee and High Commissioner
Department of State
Washington, DC

Re: FRIAS-DeLEON, Reyes

Gentlemen:

There is attached hereto an affidavit executed by Mr. Frias-DeLeon in support of his application for withholding deportation because of fear of persecution should he be returned to the Dominican Republic, which is, in effect, a request for political asylum.

Reyes Frias-DeLeon is an alien, native and citizen of the Dominican Republic, born on May 4, 1938, in Santo Domingo, Dominican Republic.

Mr. Frias-DeLeon is currently serving a sentence of three years at the Federal Correctional Institution, Danbury, Connecticut, for entering the United States by impersonating a United States citizen.

Mr. Frias-DeLeon has been entering the United States for several years using various identities and documentation pertaining to persons other than himself. He was originally charged with violation of Title 18 USC, Section 1546 in 1969, and on February 27, 1969, he pled guilty to that charge and failed to appear for sentencing having violated his bond. A fugitive warrant for his arrest was issued.

Since jumping his bond, Mr. Frias-DeLeon has been engaged in criminal activities, which has resulted in arrests in California, New York, Michigan, and London, England.

Mr. Frias-DeLeon has an extensive arrest record, which includes an arrest for murder in the Dominican Republic; two convictions for false pretenses and for larceny in San Juan, Puerto Rico; and theft in Canada, in which he was deported from Canada to the Dominican Republic in 1968. Mr. Frias-DeLeon was also arrested in London, England, on August 25, 1972, while a fugitive from the United States, and charged with bank robbery. He was sentenced to six months and fined 720 pounds. He was ordered to leave England forthwith. He escaped from his escorts at that time.

No further action is contemplated by this office until your views in this matter are received.

Very truly yours,

James E. Smith
District Director

Attachment

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF

FILE A- 18 806 788 - N. Y.

Royce Fries de Leon

IN Deportation

PROCEEDINGS

-Respondent-

TRANSCRIPT OF HEARING

Before: **Francis J. Lyons**, Immigration Judge

Date: **continued: Nov. 21, 1974** Place: **20 West Broadway
New York, N. Y.**

Transcribed by **P. J. Killeen** Recorded by **IMM Magnabolt**

Official Interpreter **Sofie Toledo**

Language **Spanish**

APPEARANCES:

For the Service:

John P. Ruggiero, Esq.,

New York, N. Y.

Trial Attorney

Station

For the Respondent:

Julius C. Biervliet, Esq.,

Legal Aid Society

11 Park Place

New York, N. Y. 10007

1 IMMIGRATION JUDGE TO RESPONDENT (through official Spanish interpreter):
2 Q What is your name?

3 A Reyes Frias de Leon.

4 Q The reason you are here - well, first, Mr. Biervliet is your attorney,
5 is that right?

6 A Yes, sir.

7 IMMIGRATION JUDGE: Mr. Biervliet, are you ready to proceed?
8 MR. BIERVLIET: I am, your honor.

9 IMMIGRATION JUDGE: And you are familiar with the proceedings had in Dan-
10 bury?

11 MR. BIERVLIET: Yes, your honor.

12 IMMIGRATION JUDGE TO RESPONDENT:

13 Q Mr. Frias, would you stand and raise your right hand to be sworn. Do
14 you solemnly swear that the testimony you will give in this proceeding
15 will be the truth, the whole truth, and nothing but the truth, so help
16 you God?

14 A Yes, I do.

18 IMMIGRATION JUDGE: Mr. Biervliet, do you raise any question on the question
19 of deportability? Or do you wish to pursue the petition of prior counsel?

20 MR. BIERVLIET: I would like to at least see and read the conviction record
21 to satisfy myself that he is deportable before I start in.

22 IMMIGRATION JUDGE: On the question of the applicability of Section 241(f)
23 you will retain that same position until you are satisfied that it does
24 apply?

25 MR. BIERVLIET: That's right, your honor.

IMMIGRATION JUDGE: All right, I understand your position now. Is the

- C-1

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 application under Section 243(h) in re the Dominican Republic?

2 MR. BIENVLIET: Yes, your honor, but I would like to make a statement to
3 your honor first. He has been incarcerated for the last two years and he
4 has not the \$25 to pay the fee for that application. I make a formal
5 application now before your honor to waive the fee.

6 IMMIGRATION JUDGE: He wishes to apply as a poor person?

7 MR. BIENVLIET: Yes, your honor.

8 IMMIGRATION JUDGE: That I will grant. I have sufficient background on
9 that already. Now, do you want to proceed now on the 243(h) application?

10 MR. BIENVLIET: Yes, your honor.

11 IMMIGRATION JUDGE: Go ahead.

12 MR. BIENVLIET TO RESPONDENT:

13 Q Mr. Frias, where were you born? When were you born?

14 A Port --- Fourth of May, 1938.

15 Q In Santo Domingo, you attended school?

16 A In Santo Domingo I went to school for about eight years.

17 Q How old were you when you left school?

18 A I suppose it was at age thirteen when I started to play soccer, and base- -ball

19 Q Did you start to work at the age of thirteen?

20 A Yes, I became a professional baseball player at the age of 16.

21 Q How long were you a professional baseball player?

22 A From 59 through 1968.

23 Q What did you do after you started playing professional baseball?

24 A I became a mechanic.

25 Q How long did you work as a mechanic?

26 A I worked for three and a half years with this man here, and then I

C-3

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 worked for a certain time with Mr. Ortiz, again as a mechanic.

2 Q From 1968 until when?

3 A My job was always as a mechanic.

4 Q When did you stop working in Santo Domingo?

5 A In 1965 when I came to the United States because of the revolution.

6 Q Were you at that time still a professional baseball player?

7 A Yes, but I came here and I was playing with the Spanish league in New
8 York.

9 IMMIGRATION JUDGE TO RESPONDENT:

10 Q From 1965 to 1968, who were you playing baseball for?

11 A In 1968 I was living in Puerto Rico. I was working there.

12 Q Who for?

13 A I worked for a man whose name is Eron (phonetic). Then I came to New
14 York in 1968. I married my wife. And then I continued to play with
15 the Spanish league for one year more here, baseball.

16 MR. BIENLIET TO RESPONDENT:

17 Q Let's get back a minute. The judge wanted to know what league you
18 played for in 1965, Let me have your answer to that question first.

19 A It was the Elysee Athletic Club in Santo Domingo.

20 IMMIGRATION JUDGE TO RESPONDENT:

21 Q How long were you with them?

22 A 1959, 1960 1961 and in 1962, and then I started to play, not with the
23 big leagues, but first with the little league they have in Santo Domingo.
24 I went to San Quentina (phonetic).

25 Q You mean the minor league?

26 A Yes, minor.

-3-
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 Q What was the team?

2 A It was a branch of the New Mexico team but it belonged to St. Louis.

3 Q Where did it play, I mean what was the team's home city?

4 A Albany, Georgia.

5 Q It was a farm team of the St. Louis Cardinals' right.

6 A Yes, it was minor league, it was not big league.

7 IMMIGRATION JUDGE: O. K.

8 MR. BIERVLIET TO RESPONDENT:

9 Q Now, in 1965 you say you came here in 65 to United States. How did
10 you come into United States then?

11 A I came with a visa which I got in the United States Consulate in
12 Santo Domingo. I had the visa before the revolution, and when the
13 revolution started I had to leave because - and after the revolution
14 I went to Puerto Rico.

15 IMMIGRATION JUDGE TO RESPONDENT:

16 Q In what month did you come here?

17 A Do you mean to Puerto Rico?

18 Q The month you left Santo Domingo in 1965, that's what I want to know.

19 A I do not remember.

20 Q Was it before the revolution or after the revolution?

21 A After the revolution.

22 Q Long after, or just then?

23 A During the revolution, I had to leave.

24 Q While the fighting was still going on?

25 A Yes, I have here a would that I got during the revolution.

26 MR. BIERVLIET TO THE INTERPRETER: Please, would you tell him just to

- C-1

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 just answer the questions, not to volunteer any information .

2 BY RESPONDENT: All right.

3 MR. BIERVLIET TO RESPONDENT:

4 Q Since you arrived here in 1965, have you ever been back to Santo Dom-
5 ingo?

6 A I did not come here in 1965, in 1965 I went to Puerto Rico, and I came
7 here in 1967 to New York. This is when I met my wife and I married
8 her.

9 Q I am still asking you, after you left Santo Domingo in 1965, did you
10 ever return back to Santo Domingo?

11 A Yes, I went in 1968. But I went from Canada to the Dominican Republic
12 but it isn't like I was reported, or deported, because I had saved my
13 ticket.

14 Q How long did you stay in Santo Domingo?

15 A I went there in 68 with my wife and child.

16 Q Did anything happen to you there while you were there in 1968?

17 A Yes, we had very many problems. A friend of mine who is very important
18 person there and who was the godfather of my daughter took me person-
19 ally to the airport because they wanted to kill me.

20 Q Who wanted to kill you?

21 A The Police Department wanted to apprehend me and kill me.

22 Q Why would they want to do that?

23 A Because they knew that I was fighting against them.

24 IMMIGRATION JUDGE: He said he was fighting against them. What did he do?

25 BY RESPONDENT: During the revolution they were fighting the police and
26 the civilians and I took part in the fighting where I was on the side of

C-5

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 the civilians against the government and against the police.

2 MR. BIENVLIET TO RESPONDENT:

3 Q Did you belong to a political party?

4 A Yes, I was a member of the Partido de Revolucionario Dominicano which
5 the President of that organization was Juan Bosch.

6 Q When you arrived in Santo Domingo in 1968, you said you had troubles,
7 but you didn't tell us specifically what kind of troubles you had.

8 A I had many problems.

9 Q What kind of problems?

10 A Five or six times a day they came to look for me in the hotel where I
11 had been with my wife.

12 EMIGRATION JUDGE TO RESPONDENT:

13 Q Let me ask you this one thing. For what reason did you go to the
14 Dominican Republic in 1968, was that just to visit?

15 A From Canada I wanted to come here, but they didn't let me come to the
16 United States, because I didn't have a visa, they sent me to the Domi-
17 nican Republic, but I was not deported. I paid my return ticket.

18 Q You went from Canada to the Dominican Republic with your wife?

19 A I went from Canada to the Dominican Republic but my wife came from New
20 York to the Dominican Republic, the same day.

21 Q And you met her down there?

22 A Yes, at the airport.

23 Q With the children?

24 A Only the older one.

25 Q Well, the other one wasn't born yet?

26 A Right.

C-6

TRANSCRIPT OF HEARING

1 Q How long did you stay altogether?

2 A Fifteen days, only.

3 IMMIGRATION JUDGE: Go ahead, Mr. Biervliet.

4 MR. BIERVLIET TO RESPONDENT:

5 Q What happened there on the first day you arrived in Santo Domingo?

6 A After I arrived in the Dominican Republic I went to my very very good
7 friend and asked him to protect me because I knew that I was going to
8 have very much trouble. Carlo Cornell (phonetic) he was the first
9 Secretary there, and he is the godfather of my daughter.

10 IMMIGRATION JUDGE TO RESPONDENT:

11 Q I still want to know what trouble you had there?

12 A He is the First Secretary of the State Department of the Dominican Re-
13 public, and the last day he took me to the airport with my wife together
14 because it was.....

15 IMMIGRATION JUDGE: Respondent presents a card, Doctor Carlos Coniello
16 (spelled) who apparently has the rank of Ambassador and is the inspector
17 of embassies and legations and consulates.

18 BY RESPONDENT: He gave it to the wife of my very good friend and she
19 signed it.

20 IMMIGRATION JUDGE TO RESPONDENT:

21 Q The Ambassador gave this to your wife for some purpose, right?

22 A He gave one to me too.

23 Q And that was to present to whom?

24 A Whatever problem I would have he says I should show that.

25 IMMIGRATION JUDGE: O. K. anything else?

26 MR. BIERVLIET TO RESPONDENT:

C-7

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 MR. BIERVLIET TO RESPONDENT:

2 Q You still didn't tell me what kind of trouble you had on the first day
3 you arrived in Santo Domingo?

4 A The first day we went to sleep in the house of Mr. Carlos Cornielle.
5 The second day he took us to the Ambassador in the capital in Santo
6 Domingo. He told me in case the police came, and she knew the police
7 were trying to come, I should not go out but I should call him right
8 away by phone and I shouldn't leave the hotel, me or my wife or my
9 child, we should all stay there. During the fifteen days I remained
10 there almost every day I had problems. Altogether there were about
11 twenty times people come, to talk to me and to ask me to go with them,
12 and whenever someone came, like a police inspector I right away would
13 call my friend and he will talk to them and then they won't pick us up.
14 This was almost every day. Until the very last day when my friend told
15 us it is going to be very difficult for us to remain longer there, he
16 went himself to the United States Consulate, and he told them they are
17 going to kill us and he got a visa for my wife and for me and he took
18 us to the airport and we got away.

19 Q You still didn't tell me what happened on the first day you arrived
20 in Santo Domingo.

21 IMMIGRATION JUDGE : You have asked him three times already.

22 IMMIGRATION JUDGE TO RESPONDENT:

23 Q What happened to you that first day in Santo Domingo?

24 A I heard that the police were looking for me all over but I was in the
25 house of Carlos Cornielle. Then he took me personally to the Police
26 Department to find out what is going on inside they are looking for me.

- C-8 -

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 And then, he was told that one of the police executives, a Major, wanted
2 to see me because I had killed so many policemen in the revolution. And
3 at this time I had \$7,000 of my own and I had to pawn \$2,000 that I had
4 in jewelry, altogether \$9,000. And all this money was given to the
5 different people just described for so they should let me go home. And
6 this is why my friend told me I cannot help you, you have to leave this
7 country. It was fifteen days of a terrible life and I suffered very
8 much and then I had to leave. The only thing in fact that saved my
9 life is the money that I had then.

10 Q And that all happened on the first day when you went back to Santo
11 Domingo?

12 A This started the first day and it went on continuously until the money
13 was finished. If this did not happen I would have remained in my
14 country because my wife likes my country very very much, but because
15 of those things we had to leave.

16 MR. BIRKVIJST TO RESPONDENT:

17 Q If this happened the first day why did you stay there for fifteen days?

18 A Because I didn't have anyplace else where to go and my wife and my
19 friend had to get out and find the way to get the visa only for 21 days
20 and in fifteen days he got it and he took us to the airport then.

21 Q And nobody killed him during the fifteen days you were there?

22 A The police tried very hard to kill them. The only thing saved my life
23 was because I had some money. That's the only thing that saved my life.

24 Q Have you any documentary evidence somewhere that we can verify that this
25 is true?

26 A Yes, even in Santo Domingo they know about me because my name is in the
newspaper, where they said I was against the revolution. Where are you

C-9

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 going to send me? If you want to send me to Cuba with my wife and
2 children, I will not say no, but I can't go back to Santo Domingo.
3 The whole world hates Santo Domingo.

4 Q Have you any relatives in Santo Domingo?

5 A Nobody. I had another daughter, whose mother is Dominican and she is
6 here in New York. She is ten years old, Louise Mariatte.

7 Q What's the relationship?

8 A She is my daughter with my Dominican wife, but we were never married.

9 Q And you have no relatives now in the Dominican Republic?

10 A No, nobody, my mother was there and she died. Oh, yes, my father, he
11 is 72 years old. During the revolution they were looking for me and
12 they came to the house and they hurt him. I did not want to make any
13 problems for you, but you can send me any place you want but not to
14 the Dominican Republic because I cannot go there.

15 Q Is anybody bothering your father at the present time in Santo Domingo?

16 A He is paralyzed, he can bother nobody.

17 Q How does he make a living?

18 A The people over there they don't have any money for food, and they are
19 starving. I don't know what is going on. They are starving they are
20 not eating.

21 Q Is all of your immediate family in the United States, father, sister
22 brothers mother, children?

23 A I have my wife and three children in the United States.

24 Q Are you married?

25 A Yes. I am married for seven years.

26 Q What is the nationality of your wife?

C-10

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

A United States.

1 MR. BIEWLIET: I rest, your honor

2 IMMIGRATION JUDGE: Mr. Ruggiero?

3 MR. RUGGIERO: Yes, sir.

4 MR. RUGGIERO TO RESPONDENT:

5 Q Who was in power in 1965 in February, 1965 in the Dominican Republic?

6 A ---

7 Q Prior to the revolution?

8 A Juan Bosch, it is his party I belong to.

9 Q Isn't it a fact sir that in February 22, 1965, several months prior to
10 the revolution you were arrested in Santo Domingo and charged with
11 murder?

12 A Yes, but do you know how this murder happened?

13 IMMIGRATION JUDGE TO RESPONDENT:

14 Q But you were arrested in February of 1965?

15 A It was not just like that. My wife hurt my daughter, the daughter
16 then hurt me and even the judge said if he would be in my place he
17 would do the same thing himself. And I was freed on \$500 bond.

18 Q What happened, somebody was hurt?

19 A The judge said I was not guilty.

20 Q Well, what was the charge?

21 A I was 24 days in prison and the charge against me was dismissed.

22 Q What was the charge?

23 A The woman had the knife and she cut me here in two places, and then
24 she started to cut, at this moment when I saw this, I took a baseball
25 bat and I hit her and she died.

26 Q Who was involved or was cut with the knife, you and who else?

C-11

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A My daughter and me.

2 Q That's another daughter, that is not a daughter of this present marriage.

3 A She is Louise Maria --no Luce Maria, she is near 14 years old now.

4 IMMIGRATION JUDGE : Carry on.

5 MR. HUGGIERO TO RESPONDENT:

6 Q That had all happened prior to February 1965 and you were arrested for
7 that on February 22, 1965, right?

8 A It was before that.

9 Q And isn't it a fact that the case was suspended because of the revo-
10 lution?

11 A No, my case was settled already when the revolution came. Then much
12 later the revolution came.

13 Q Have you learned that the Dominican government has now resumed the
14 case, that case is now reopened. Have you learned that?

15 A No, no. They look for me because they wanted me as a counter-revolu-
16 tionary.

17 IMMIGRATION JUDGE TO RESPONDENT:

18 Q You had said they wanted you because of all the policemen you killed.

19 A Because I fought against the government.

20 Q And you didn't actually kill any policemen?

21 A No, no, but they accuse you there anyway and they accuse everybody of
22 that, because all the people they take in as counter-revolutionaries
23 are all killed, murdered. Every day this happens.

24 MR. HUGGIERO TO RESPONDENT:

25 Q And in spite of all this you returned in 1968 and stayed there during
26 this trying period of fifteen days. Is that what your testimony is?

C-12

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 A I was sent from Canada to there, I was not deported, I paid my return
2 ticket, but I didn't want to go there. If I had a visa here I would
3 have come but I didn't have one. Why do you keep on with this, it
4 was only until I found a way to get the visa to come here. I had to
5 pay very much money to my friend, and he had to talk to a general
6 and the general had to get the visa.

7 IMMIGRATION JUDGE TO RESPONDENT:

8 Q So that was a general, someone different from Mr. Cornelle?

9 A Yes.

10 Q What was the name of this general?

11 A The name is Captain Reyes (spelled). He is the captain of the Police.
12 Carlos
13 With three stripes. And my friend took us to the airport and we
14 talked with them. And the wife of Carlos Cornelle came too.
15 Because they were worried that during the trip from the hotel to the
16 airport they would find me and kill me. And they remained with me
17 all the time until I went into the plane, and until after the plane
18 left.

19 IMMIGRATION JUDGE: Go ahead.

20 MR. HUGGINS TO RESPONDENT:

21 Q When you knew you were leaving Canada for the Dominican Republic,
22 did you anticipate that you would have problems in the Dominican
23 Republic?

24 A Yes, I knew that I would have these problems, with the police.

25 Q And would you please explain to me, if you knew or anticipated having
26 great problems in the Dominican Republic, why did you ask your wife
to join you there with your child?

A Because I knew that she would help me, in fact she was the one who

C-13

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

saved my life. She is an American.

1 Q Well, how did she save your life in the Dominican Republic?

2 A Because of her in the Consulate, they all spoke together and helped
3 me to stay alive. You see every day the police captain passed on the
4 money to the colonel until the money was finished and then I didn't
5 have any more money and I had to leave.

6 Q Well, between the money and this Mr. Cornielle that all helped you
7 is that correct?

8 A Yes, with the money that I brought and with the help of my friend.
9 If I didn't have the money I wouldn't be alive today.

10 Q So your wife could have helped you then without the money, right?

11 A My wife helped me very much because she is U. S. citizen.
12 And I was next to her all the time.

13 MR. HUGGIERO: I have no further questions.

14 IMMIGRATION JUDGE: Do you have a referral to the Refugee and Migration
15 Affairs Office?

16 MR. HUGGIERO: Yes, sir. It was sent October 16th in writing. I was in
17 contact with Washington, yesterday and they advised me that a writing
18 will be returned reflecting that the State Department has denied.

19 IMMIGRATION JUDGE: You have not yet received their reply by letter?

20 MR. HUGGIERO: That's right, sir, the actual writing has not yet been
21 received. What I am saying is really a telephonic advice.

22 IMMIGRATION JUDGE: Anything else, Mr. Biervliet?

23 MR. BIERVLIET: No, your honor.

24 IMMIGRATION JUDGE: I will reserve decision pending receipt of the
25 reply from State Department so that the record will reflect that the
26

C-14

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 referral has been made and you will have an opportunity to see that
2 before it is placed in the record, Mr. Biervliet and either of you
3 want further inquiry after receipt of that, we will reconvene the hearing
4 within the next day or two of receipt of that letter. Now as to the
5 matter of bond, I will not disturb that. We will try to get a decision
6 in the next few days.

7 IMMIGRATION JUDGE TO RESPONDENT:

8 Q Do you understand that?

9 A Yes.

10 MR. BIERVLIET: Your honor, for the record, before you close it off.

11 I had a conversation with an attorney from Jan: Law School,
12 this morning and I explained to him that I would come to the 243 hearing
13 with you this afternoon on the basis of the information I had from the
14 trial from Mr. Saggiero that the State Department denied this applica-
15 tion, and he asked me if I would reserve the right to appeal. I had
16 advised him that after I tried this case and if I didn't see any merit
17 to appeal the matter that I ^{not} must reserve my right to appeal, but he
18 asked me specifically to reserve his right to appeal if he so desires

19 IMMIGRATION JUDGE: In other words, if an appeal is to be filed it is
20 to be filed by them.

21 MR. BIERVLIET: Yes, if you should decide negatively.

22 IMMIGRATION JUDGE: If I rule adversely on the application for 243(h)?

23 MR. BIERVLIET: That's right, your honor.

24 IMMIGRATION JUDGE: I hope to get that decision to you soon. We may
25 possibly reconvene but I doubt it.

26 MR. BIERVLIET: Thank you, your honor.

C- 15

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service



DEPARTMENT OF STATE

Washington, D.C. 20520

13 DEC 1974

Dear Mr. Smith:

Reference is made to your letter of October 16, 1974, concerning the request for asylum of Mr. Reyes Frias-DeLeon, A18 806 758, a citizen of the Dominican Republic.

On the basis of the information provided, we do not believe that Mr. Frias-DeLeon has made a valid claim to asylum. His affidavit states that he cannot return to the Dominican Republic because he was a supporter of President Juan Bosch and all supporters of President Bosch are subject to summary execution. On the basis of the Department's knowledge of conditions in the Dominican Republic today, these allegations are totally without foundation. However, even were Mr. Frias-DeLeon's allegations to have substance, his various arrests in both the United States and England would bring him under the provisions of Article 33 Section 2 which states as follows: "the benefit of the present provision may not however be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who having been convicted by final judgment of a particularly serious crime, constitutes a danger to the community of that country".

On the basis of the information thus far submitted, we are unable to conclude that Mr. Frias-DeLeon should be exempted from regular procedures on the grounds that he would suffer persecution on account of race, religion, nationality, political opinion, or membership in a particular social group should he return to the Dominican Republic. Should Mr. Frias-DeLeon present additional information which to the Service seems to require further review, we will be glad to give further consideration to the case.

Sincerely,

Louis A. Wiesner

Louis A. Wiesner
Director
Office of Refugee and
Migration Affairs

Mr. James E. Smith,
District Director,
Immigration and Naturalization Service,
Post Office Building, 135 High Street,
Hartford, Connecticut 06101.

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF

FILE A- **18 896 756 - N.Y.**

MEYER FRIAS DE LEON

IN **Deportation** PROCEEDINGS

-Respondent-

TRANSCRIP OF HEARING

(not present)

Before: **Francis J. Lyons**, Immigration Judge

Date: **December 20, 1974** Place: **80 West Broadway, New York, N.Y.**

Transcribed by **P. J. Kiliola** Recorded by **MM - Lanier**

Official Interpreter **none used**

Language **English**

APPEARANCES:

For the Service:

John P. Pugliano, Esq.,
Trial Attorney

New York, N. Y.

Station

For the Respondent:

Julius G. Biervliet, Esq.,

Legal Aid Society

11 Park Place

New York, N. Y.

1 BY IMMIGRATION JUDGE: Mr. Biervliet, and the rest of you gentlemen, I
2 have asked you to come in on this case today since I have been advised
3 that the reply from the Refugee Migration Affairs, that office, of the
4 Department of State, that is to say the reply they furnished to the inquiry
5 made of them by the District Director's office on October 16th. Mr.
6 Biervliet you have seen the original and I will now give you a copy for
7 your records, and I am going to make this a part of the record. In reach-
8 ing my conclusion in this matter I don't propose to be guided by their
9 opinion. I will make my decision on the record, on the entire record pre-
10 sented to me. But my determination will not be based on the Department of
11 State's opinion. I will proceed to make my decision based on my own eval-
12 uation of what is presented to me. Have you any objection Mr. Biervliet
13 to this document being made part of the record?

14 MR. BIERVLIET: No objection, your honor.

15 IMMIGRATION JUDGE: All right, I will proceed to my decision based on the
16 record. Is there any need for any further inquiry from the respondent,
17 who is not here today?

18 IMMIGRATION JUDGE: Mr. Biervliet, I understand you would like to have the
19 Service furnish you with copies of one or more of the convictions which
20 are referred to but which records are not available.

21 MR. BIERVLIET: That's correct, your honor.

22 IMMIGRATION JUDGE: So, the question of otherwise admissible under 241(f)
23 would be resolved to your satisfaction?

24 MR. BIERVLIET: That's correct, your honor.

25 IMMIGRATION JUDGE: If it should be found that those records are essential
26 - well - perhaps we could stipulate that if they are records which are

- I - A

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

germane to the issues raised by co-counsel, that we could make them a part of the appeal record, at least for the information afforded.

MR. BIERVLIET: That's correct, your honor.

IMMIGRATION JUDGE: Assuming it had some relevance to the argument they make.

MR. BIERVLIET: I so stipulate, your honor.

IMMIGRATION JUDGE: Fine, Mr. Biervliet. Is that agreed, Mr. Ruggiero?

MR. RUGGIERO: Agreed.

I certify the within two typed pages, numbered 1-A and 1-B, comprise a true and complete transcript of everything electronically recorded at the above described meeting, in this matter.

Recorded: 12/20/74
transcribed: 12/20/74

Patrick J. Killela
Transcriber

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service:

File No.: A 18 806 756 - New York

In the Matter of:)

Royas Prias de Leon) In Deportation Proceedings

- Respondent -)

CHARGE: I & N Act - Section 241(a)(5) - (8 USC 1251(a)(5) -
convicted under 8 USC 1546.

APPLICATION: Termination under Section 241(f) of the I & N Act;
and Withholding of deportation to the Dominican
Republic under Section 243(h) of the I & N Act.

On Behalf of Respondent:

Michael J. Chargin, Esq.,
127 Wall Street,
New Haven, Connecticut, 06520

and:

Julius C. Biervliet, Esq.,
Legal Aid Society
11 Park Place
New York, N. Y., 10007

On Behalf of Service:

John P. Raggiaro, Esq.,
Trial Attorney
New York, N. Y.

DECISION OF THE IMMIGRATION JUDGE:

Respondent is a 36 year old married male alien. He is a native and citizen of the Dominican Republic who entered the United States at Champlain, New York, on or about November 1, 1972. On September 4, 1973, he was convicted in the United States District Court for the Eastern District of New York for violation of 18 USC 1546. The respondent concedes having been so convicted and the record of the conviction is in evidence as Exhibit 2. Respondent does not concede that he is subject to deportation on the charge set forth in the Order to Show Cause. However, I find on the basis of the entire

record that deportability is established under Section 241(a)(5) of the Immigration and Nationality Act in that he has been convicted under 18 USC 1546.

The respondent argues that he is not subject to deportation by reason of the operation of Section 241(f). I find counsel's contentions, as set forth in his memorandum and motion, to be not well founded. To begin with, Section 241(f) deals with the deportability of aliens who are charged as excludable at time of entry. The charge under Section 241(a)(5) (18 USC 1251(a)(5)) is one which arises without regard to entry. As a matter of fact, respondent's case involves a conviction after his last entry for a crime committed prior to that entry. I find the respondent deportable on the charge set forth in the Order to Show Cause.

11
Respondent has declined to name any country as the place of deportation and has applied for the withholding of deportation to the Dominican Republic on the ground that if sent there he would be subject to persecution within the meaning of Section 243(h). The respondent says that during the 1965 revolution in the Dominican Republic, and prior thereto, he had been a supporter of Juan Bosch who was, for a period, the President of the Dominican Republic. Although he claims to have been a supporter of President Bosch, he has presented no specific evidence as to the extent of his involvement in political

activity in the Dominican Republic at any time. Respondent has been a professional baseball player with a minor league club in Albany, Georgia. Because of his professional career he claims wide popularity in the Dominican Republic and consequently his activities in support of President Bosch were well-known in the Dominican Republic. During the 1935 revolution respondent claims he was actively serving under the command of Colonel Comandante Dino, and that he suffered a bullet wound in the head.

Respondent attended school for about eight years in the Dominican Republic and left school at the age of thirteen. He claims to have begun his professional baseball career at age 15, and to have played in the United States from 1959 until 1963. Thereafter he worked as a mechanic.

Respondent asserts he left his native country during the 1935 revolution there and did not return until 1938 when he was sent there from Canada. On that occasion he remained in the Dominican Republic for fourteen or fifteen days, during which time he claims to have been harassed. This claim of harassment and his present fear of persecution if he returns, are somewhat weakened by his insistence that he went to the Dominican Republic voluntarily from Canada. He says he was not deported, that he went to the Dominican Republic because that was the only place to which he could then go. At the same time, however, he made arrangements to have his wife meet him in the Dominican

Republic. In fact, she did so on the same day that he arrived, proceeding in her case, from the United States to Santo Domingo. His description of the harassment to which he was subjected hardly adds up to persecution. He says that from the very first day of his arrival, he was harassed by the police. However, he was able to bribe the police and avoid being arrested. This testimony must be measured against the fact, on the first day he arrived, he went to the home of Carlos Cornielle whom respondent identified as a high-ranking official of what would be the equivalent of the State Department, with the rank of Ambassador. The respondent says he stayed the first night in Mr. Cornielle's home, and the following day was taken by his host to the Ambassador Hotel in Santo Domingo, was cautioned to avoid going out and to notify Ambassador Cornielle if he encountered any difficulty with the Police. Respondent claims he paid out \$9,000 in bribes during his two week visit there to avoid being arrested.

Despite all the so-called harassment, and the necessity of paying all these bribes, respondent was able to leave the Dominican Republic. Indeed he was taken to the airport by the Ambassador who also helped him procure his visa from the United States Consulate. The picture drawn by the respondent of being a fugitive does not square with being taken to the airport by a high-ranking official, in the company of a Police Captain who also assisted him. The whole party was accompanied by respondent's wife and the wife of the Ambassador. This hardly portrays a wanted or hunted man. I find the evidence presented

by the respondent in support of his claim that he would be subject to persecution, within the meaning of Section 243(h), to be insufficient to bear his burden of showing the kind of particularized persecution contemplated by the statute. His claim is entirely in generalizations. Indeed, the only testimony with regard to any specific activity of the respondent relates to his killing of a lady who was apparently a friend or relative. Respondent says that this woman attacked him and his daughter with a knife and, in defending himself and his daughter, he beat the woman to death with a baseball bat. Thereafter, he was arrested and before the prosecution could be completed, he fled the country. It may well be that the respondent faces possible prosecution for this crime if he returns to the Dominican Republic but this would not bring him within the ambit of Section 243(h). The application will be denied.

In reaching my conclusions I have not relied on the opinion expressed by the officials of the Office of Refugee and Migration Affairs whose views were solicited by the Service. I have considered only the evidence presented in the record before me.

The respondent was detained after his conviction under 8 USC 1546, from September 4, 1973 until he was released to the Immigration Service at the end of October, 1974. By reason of Section 101(f)(7) and his having been so confined, he is ineligible for voluntary departure, the only application for discretionary relief from deportation for which he might otherwise be qualified. Deportation will be

ordered.

ORDER: IT IS ORDERED that the respondent be deported from the United States to the Dominican Republic on the charge contained in the Order to Show Cause.

IT IS FURTHER ORDERED that application for withholding of respondent's deportation to the Dominican Republic pursuant to Section 243(h) of the Immigration and Nationality Act, be denied.

FRANCIS J. LYONS
Immigration Judge

Dec. 26, 1975

REYES FRIAS-DE LEON

LA 80-758

Mr. Milhollan, Mr. Maniatis
and Mr. Appleman

For Respondent: Michael J. Churgin, Attorney
127 Wall St.
New Haven, Conn. 06520
and
Anna M. Durbin, Law Student
127 Wall St.
New Haven, Conn. 06520

For Immigration Service: Paul C. Vincent,
Appellate Trial Attorney

Request: 241(f) and 243(h) Relief.

Attorney Churgin: My name is Michael J. Churgin and I am supervising attorney with the Legal Service Organization of the Yale Law School, a member of the Bar of the States of New York and Connecticut, and have appeared before this Board on two prior occasions, and I herewith request permission for Miss Anna M. Durbin, a law student at Yale Law School to appear here. She has been given permission to appear before the U.S. Court of Appeals, 2d Circuit, and if there is any need for me to supplement her statements, I will do so.

Mr. Milhollan: You may proceed.

Miss Durbin: Reyes Frias-De Leon is a native and citizen of the Dominican Republic. He is appealing his order of deportation on two grounds. To the Immigration Judge below he presented a motion to dismiss deportation proceedings, relying on Section 241(f) of the Act, and he accompanied this with a copy of his wedding certificate and birth certificates of his wife and children.

His wife is an American citizen and they have been married since Aug. 26, 1967; the children are Marian Frias, born in 1968 and Reyes Frias, Jr. born in 1972. In addition Mr. Frias submitted an application for withholding of deportation as a result of persecution under Section 243(h) of the Act. This was also denied below.

In the order to show cause it alleges and Mr. Frias admitted that he entered the U.S., Nov., 1972 from Canada, on Sept. 4, 1973 he was convicted upon his plea of guilty in the U.S. District for the Eastern District of New York for violating 18 USC 1546, which is fraudulent use of documents. The court sentenced him to 3 years imprisonment, and now the Immigration Service seeks to deport him pursuant to Section 241(a)(5) of the Act, charging that he has been convicted under Section 1546.

Section 241(f) makes those sections of 241 relating to deportation inapplicable to aliens who entered the U.S. by fraud who are otherwise admissible, and who are spouses or parents of an American citizen. The purpose of this Act was a beneficial one, to keep families of American citizens intact. Mr. Frias clearly fits within this category, and his conviction under 1546 resulted directly and exclusively from his entering falsely into this country.

The indictment charges that he claimed to be a Rafael Lara Ortiz when he entered when he was not. We submit that any alien who enters the U.S. using fraudulent documents is liable to prosecution and conviction under Section 1546

of the Criminal Code, and then using this ground solely to deport him and deny him the benefit of Section 241(f), would render this beneficial section of the Act meaningless. This Board and the Courts, including the Supreme Court, have consistently held that benefits of 241 are not restricted to situation in which fraud or misrepresentation at entry is specifically charged by the Service as a ground for deportability.

The courts and the Board have looked to the intent of Congress and to the benefit of keeping families together when ruling on this, and they have looked to the underlying facts. Mr. Frias' conviction resulted exclusively from fraud committed at time of entry, and in Errico v. I&N Service the Supreme Court specifically said that 241(f) waives any deportation that results directly from misrepresentation regardless of the section in which the charge was brought.

Even if there were some doubt as to the construction of the statute the doubt should be resolved in favor of the alien. If Mr. Frias is deported and deprived of the benefits of 241(f), the fundamental purpose of the Act to unite the family will be ignored. There are two children and a wife who will be left dependent, perhaps on public assistance if he is deported, and merely selecting from the statute 241(a)(5) (a)(1) or (a)(2) should not make any difference if the only reason Mr. Frias is deportable is that he committed fraud and was later convicted for it. (Have done best I could on above but Miss Durbin talked very rapidly and was most difficult to follow at times).

As to Mr. Frias' persecution, he has presented sufficient particularized evidence of his past

political activities to show the future possible persecution and prosecution to entitle him to withholding of deportation should the Board find against him on 241(f).

He was a well-known baseball player in the Dominican Republic for several years before he left that country. He was active politically on behalf of Juan Bosch during his accession to power in 1963, and he fought to restore him to power after he was removed by a coup in 1965. Mr. Frias in addition sustained a bullet wound in his head and left the Dominican Republic as he was being suppressed.

In 1968 Mr. Frias briefly returned to the Dominican Republic but he was continually harassed there for 14 days by the police there. Because his American citizen wife was with him, because he had a friend, the first secretary of the Dominican State Department, who tried to help him while there, because he paid over \$9,000 in bribes, he managed to avoid arrest and left the country alive.

But the presence of Mr. Conielle, his friend in the State Department, was required at the airport to protect him when he left, and Mr. Conielle told him he could guarantee his safety no longer. Since then two specific events have made it clear the Dominican Republic is not a safe place for him. On or about Feb. 27, 1973, his commander in the pro-Bosch revolution, Col. Francisco Deno, was executed by the Dominican police. After Mr. Frias applied for withholding of deportation in this case he learned of the revival of a 9-year old homicide charge in the Dominican

Republic which was originally dismissed in 1965, when he proved he had acted in self-defense during a knife attack. It seems the very fact he expressed opposition to the present government and the police in his application for withholding of deportation, has increased his danger of prosecution.

The Immigration Judge below erroneously found he had presented insufficient particularized evidence. Now, he stated that he had presented no specific evidence as to the extent of his involvement in political activities in the Dominican Republic at any time. However, we submit that being a well-known person, who fights in a revolution, to attempt to return, certainly constitutes then political activity.

He cannot possibly obtain documentary proof of his service in the revolutionary army. Documents showing his 9-year old homicide charge was resumed because the government would never give him those documents and would never admit they wished to punish him for his past political activities. However his own testimony describes the facts and it should be sufficient under past decisions of the Board. In Matter of Janus & Janek this Board, in 12 I&N Dec. 866, said the standards to be looked to under 243(h) in evaluating all the facts and circumstances were twofold.

First was the departure of respondent from the country politically motivated? And second are the consequences facing respondent upon return political in nature? Mr. Frias left the Dominican Republic twice for political reasons. In 1965 he left as a revolution was being suppressed, after he received a head wound fighting for the revolutionary army.

In 1968 he left because the police threatened and harassed him for his well-known role in fighting them in the revolution. It is worth noting he was allowed to leave at that time from the Dominican Republic and no mention was made of the homicide charge. It is clear they don't want him to return as a free citizen when his background and opinions will attract public notice.

The fact that it is a homicide prosecution and it is waiting for him doesn't mean it will not be political. The 9th Circuit Court of Appeals in Kovac v. I&N Service, at 407 F. 2d 102, in 1969, found that a Yugoslav sailor who jumped ship and faced prosecution in Yugoslavia for desertion of his ship, would suffer persecution because of his political beliefs, although the charge he faced was criminal in nature.

So for those arguments Mr. Frias submits that he should first have deportation proceedings against him dismissed because he is eligible to stay in this country under Section 241(f); and second, if the Board finds against him in that argument, he will surely suffer persecution and probably execution when he returns, and under 243(h) he should have withholding of deportation. Thank you.

Mr. Appleman: With respect to ^{the} Section 241(f) aspect of the record, the conviction record shows a conviction in 1973, and the allegations in connection with it, and the grand jury charge of indictment, reflects that the act occurred July 18, 1968, at which time he impersonated a U.S. citizen apparently.

Miss Durbin: It doesn't reflect whether it was a citizen or not.

Mr. Appleman: It says impersonation, and sets the basis for the conviction. I notice he has last entered the U.S. on Nov. 1, 1972. Would you care to comment on the fact that the conviction doesn't relate or did not relate to his entry as such? Or does it feel that has no relevancy?

Miss Durbin: The conviction related to his entry in 1968, and it was a fraudulent entry, that is how he came to be in the U.S.

Mr. Appleman: His last entry is alleged to have occurred in 1972, am I correct that this is the basis on which deportability rests, his entry in 1972? Or is it your contention this is not relevant?

Miss Durbin: It is our contention if the Service wishes to deport Mr. Frias because he was convicted of a crime involving fraud at entry, that 241(f) will still relieve him of that deportation, because the only conviction is for fraud.

Mr. Appleman: So if they had used the charge he entered in 1972, say without a document, or something like that, it would be a different situation?

Miss Durbin: It would be a different situation, yes.

Mr. Vincent: Thank you, Members of the Board. I think Mr. Appleman has just more or less presented my argument on 241(f), along with the Immigration Judge, Mr. Lyons, that here we have a charge of 241(a)(5), which specifically mentions

a conviction under 18 USC 1546, and as the record shows, the conviction was subsequent to the entry of respondent for a crime committed prior to the entry. There is no connection between the charge in the indictment, the conviction, or the charge in the order to show cause with his entry into this country. And 241(f) specifically states it must relate to a charge which renders a person excludable at time of entry.

That would be in my opinion, pretty much restricted to 241(a)(1), if we take Congress' language at its face value, and I think we are entitled to do that. I agree with the Immigration Judge that 241(f) is not available to this respondent.

Now, as to the 243(h) claim, I think the basic weakness of this claim is that it consists of nothing but very broad general self-serving statements of the respondent, with no tid-bits as evidence. The man says he left the Dominican Republic in 1965 during the revolution because he had been a supporter of Bosch. We don't know why he left, did he have to leave? There is no explanation. It sounds very urgent to say I left during the revolution because I supported Dr. Bosch, but that is not evidence of the reason as to exactly why he left, was he chased? Was he pursued? Was his life in jeopardy?

The Judge had no evidence and neither does this Board. In 1968, 3 years later, he returned to the Dominican Republic voluntarily, from Canada. He said no, he was not deported, he went on his ^{own} power and he made arrangements to meet his wife, also outside the Dominican Republic, to meet her in the Dominican Republic. When he

arrived in the Dominican Republic he stayed as a guest in the home of a gentleman whose name is in the record, who according to the Immigration Judge, has the equivalent of Ambassadorial rank, a man fairly high in the Dominican Republic State Department. He was a house guest that first night and the second night the diplomat or the official drove this respondent to his hotel where he got reservations, and he stayed for another 13 or 14 nights.

When he left the hotel he was driven to the airport by this diplomatic official, and in the car or cortege was a police captain and also the respondent's wife. These are not the indicia of possible persecution and harassment that respondent has referred to without submitting any proof or any specific details of that.

Now he also mentions that he left the Dominican Republic after he had murdered a woman with a baseball bat because, according to his story, she had attacked him with a knife. Now, he is possibly subject to prosecution, I assume there is no statute of limitations, and I should not even assume it, of homicide in the Dominican Republic. But even if he is subject to arrest and prosecution, that is not the persecution encompassed within Section 243(h). I submit that the denial was perfectly proper on the record in this case, and that this appeal should be dismissed. Thank you.

Miss Durbin: First in answer to Mr. Vincent's remarks, 241(f) doesn't relate only to Section 241(a)(1) but it relates to all of Section 241. The Service has not presented anything that shows

Mr. Frias was excludable in 1972. He had not yet been convicted of any crime then. He was only convicted after. The only fraudulent thing that the Service has shown about him is his entry into the U.S. in 1968. As to the Section 243(h) claim, all of the testimony of respondent relates to his prosecution. If he is unable to present documentary evidence, certainly his testimony is allowed to be looked at in an unprejudiced manner.

I think the Immigration Judge below didn't really give him much benefit at all. He characterized him as being in a triumphal return when he was there in 1968; that he was escorted to the airport in grand style. Mr. Frias' testimony certainly shows a picture of a man who was afraid the entire time he was there, he was afraid to go out.

The person who was attempting to protect him told him he could no longer protect him, and that is why he left. The fact there was a homicide charge against him in 1965, which was not mentioned in 1968, and now, 9 years later, is suddenly brought up, when Mr. Frias applies for withholding of deportation on persecution grounds, looks very strange and curious to me. It looks very much like persecution. If there had been an outstanding murder charge against him I doubt if the police captain would have been escorting him to the airport, as has been characterized.

Attorney Churgin: One final conclusion. With regard to the 241(f) claim, once the claim has been raised, the Service has to prove, it has the burden of proof by clear and convincing evidence, to prove he is deportable, and we submit he is not, that they haven't proven it, that he is deportable, and it has not refuted the 241(f) claim raised, once raised.

Another matter, in the past, we are asking if

this Board rules against us on both the 241(f) claim and the 243(h) claim, we ask that in dismissing the appeal, that that dismissal be stayed for let's say 5 days, for us to appeal to the Court of Appeals of the 2d Circuit. In a prior case before this Board the Service notified counsel by phone and I received the actual decision in the case the day after the Service had already deported the person from this country.

What happened was I got the phone call on Tuesday and I waited for the decision to know what basis the Board had relied on, and I proceeded to file my petition for review immediately upon receipt, and was informed that the person had already been deported from this country the prior day. And therefore we request that if this Board does dismiss that we be given a stay of 5 days so we can file our papers and not run the risk of the person being sent out of this country before we even have read the decision of this Board.

Mr. Appleman: May I ask a question. Harking back to 241(f), suppose the conviction and the acts leading up to it and the conviction itself under the 1546 had occurred say 10 years before this entry in 1972, on the occasion of some prior entry into the U.S., and he had left and the facts alleged were exactly as set forth in the order to show cause here. In other words you don't have the time relationship which you seem to have here between the 1972 entry and the 1546 conviction. Would you then argue the same thing, that there necessarily was a fraud with respect to the 1972 entry? Aren't you in effect, reading something more into the charges that have been placed against the man than appear in the record, namely that he entered in 1972 by fraud?

Attorney Churgin: With regard to what you have just suggested, it is not the situation in this case. The conviction actually took place after entry, so when he did come in he was ^{an} inadmissible individual, and the fraud on which the order to show cause is based, relates directly to the 1968 entry, and encompasses with regard to this most recent entry. To a more restricted reading of it, it takes 241(f) and restricts it more than the language Congress intended. 241(f) is a very broad statute, and its broad exceptions go to all the sections of 241. Congress had a specific purpose in doing so, and the courts have reflected that in their decisions.

Mr. Appleman: Let me follow through on that. Suppose the 1972 entry, which is the one alleged in the order to show cause as the basis for the act here, had been, let's say, as a refugee, a lawful entry in all respects. Would you then argue, because he had been convicted say 10 years before under 1546, that therefore he was entitled to a Section 241(f) waiver regardless?

Attorney Churgin: Once again that is not the case here, and I don't want to be pressed into a small corner with regard to the question raised, but in this case the conviction followed the entry. We have raised the 241(f) claim and the Board has to prove by clear and convincing, that is the Service has to prove by clear and convincing evidence that this individual is deportable, and I don't think they have met that burden.

Mr. Vincent: Thank you. If I say, in response to that last rather surprising remark by Mr. Glavin, that after 241(5) is raised by the defendant, then the burden is on the government to prove the deportability by clear, convincing and unequivocal evidence. The burden is always on the government to prove deportation, that is our burden, and what is the charge in this case? The charge in this case is 241(a)(5), and 241(a)(5) is provided for specifically by Congress for a conviction under 18 USC 1546.

The conviction is in the record, it is not disputed, therefore the government has proved its charge both clearly, convincingly and unequivocally. As far as the charge itself, I might say that the decision to issue an order to show cause and what charge is contained therein, is unquestionably, this Board has said so on more than one occasion, solely within the jurisdiction and the discretion of the District Director.

So I say to the Board, and I cite Matter of Merced, Int. Dec. 2273, Matter of Geronimo, 13 I&N Dec. 680, and Matter of Gallares, Int. Dec. 2177, that the Board's only function is to determine whether the charge alleged in the order to show cause has been sustained by the government, by clear, convincing and unequivocal evidence. And the Board has said that as recently as in the Lennon case, Int. Dec. 2304. That is all I have, thank you.

Mr. Appleman: Mr. Vincent, before we leave it, what would be your position in this case if that 1546 conviction related to conduct in connection with his last entry in 1972? Fraudulent conduct?

-14-

Mr. Vincent: I would have to know if the charge in the order to show cause, I am assuming it is 241(a)(5), is a conviction under 18 USC 1546, and then we refer over to the indictment and the indictment charge in that case is that the man assumed a false identity upon entering the U.S. Then of course you have fraud.

Mr. Appleman: You think it would be a closer case?

Mr. Vincent: Much closer, yes.

Mr. Milhollan: Thank you very much, we will take it under advisement.

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UNITED STATES DEPARTMENT OF JUSTICE

Board of Immigration Appeals

In re:

Reyes FRIAS de Leon,

File No. A18 806 758

Respondent.

BRIEF FOR RESPONDENT

**Anna Durbin
Michael J. Churgin
His Representatives
127 Wall Street
New Haven, Connecticut 06520
(203) 436-2210**

INTRODUCTORY STATEMENT

Reyes FRIAS DeLeon, a native and citizen of the Dominican Republic, appeals from the order of the immigration judge dated December 20, 1974, that he be deported to the Dominican Republic. He also appeals from the denial of his application for temporary withholding of deportation pursuant to §243(h) of the Immigration and Nationality Act.

Mr. Frias submitted a Motion to Dismiss Deportation Proceedings, relying on §241(f) of the Act accompanied by copies of his marriage certificate and the birth certificates of his wife and children. In addition, he submitted an Application for Withholding of Deportation as a Result of Persecution pursuant to §243(h) of the Act. At a hearing held on November 21, 1974, he presented evidence substantiating his §243(h) claim.

The issues in this case are:

- 1) whether the immigration judge erred in denying Mr. Frias the benefit of §241(f) of the Act; and
- 2) whether the immigration judge erred in denying Mr. Frias's application for temporary withholding of deportation pursuant to §243(h) of the Act.

Reyes FRIAS DeLeon has been married since August 26, 1967, to Amparo Ortiz Frias, an American citizen. They have two children: Marian Frias, born in New York on June 7, 1968; and Reyes Frias, Jr., born in New York on February 1, 1973. Mr. Frias last entered the United States on or about November 1, 1972. On September 4, 1973, Mr. Frias was convicted

upon his plea of guilty in the United States District Court for the Eastern District of New York for violating 18 U.S.C. §1546 (fraudulent use of documents). This conviction arose from an indictment dated August 27, 1968, charging that on August 18, 1968, Mr. Frias entered the United States using the documents of one Rafael Lara Ortiz, who is a permanent resident alien.

Mr.

DISCUSSION

- I. BY OPERATION OF §241(f) OF THE ACT, MR. FRIAS IS NOT SUBJECT TO DEPORTATION UNDER §241(a)(5).

The provisions of Section 241(a)(5) of the Immigration and Nationality Act directing the deportation of certain aliens do not apply to Mr. Frias. He is in the class of aliens relieved from deportation by §241(f). At the time of his entry into the United States in 1968, he was excludable only because he entered using the documents of another alien. As such he procured "entry into the United States by fraud or misrepresentation." §241(f). Since Mr. Frias was otherwise admissible at time of entry and is the spouse and parent of United States citizens, Congress has mandated that he not be deported pursuant to §241.

While the Order to Show Cause in this case alleges, and Mr. Frias admitted, that he last entered the United States on or about November 1, 1972, the Service does not allege any ground of deportability relating to that entry. Instead, deportability is alleged on the basis of Mr. Frias' fraudulent 1968 entry, which led directly to his conviction. He pleaded guilty to violation of 18 U.S.C. §1546, "Fraud and misuse of visas, permits and other entry documents," admitting that on August 18, 1968, he had: "when applying for ... admission to the United States personate[d] another, ... or attempt[ed] to evade the immigration laws by appearing under an assumed ... name without disclosing his true identity." The impersonation was fraudulent; he misrepresented his identity. The fraud was directly related to Mr. Frias's entry at that time. If this scheme had been discovered before he arrived in the United States,

Mr. Frias could have been denied permission to enter. He was "excludable at time of entry" under §212(a)(19) of the Act as an "alien who...has procured...documentation, or seeks to enter the United States, by fraud or by willfully misrepresenting a material fact."

There is nothing in §241(f) that limits its benevolent effect to aliens who have committed fraud at their most recent entry. Such a consideration is entirely irrelevant to the purpose and intent of the provision to keep intact the families of American citizens. The only requirements necessary to come within its purview are that the alleged deportability be premised on fraud at the time of entry and that at that time the subject was otherwise admissible. Referring to §241(f), the Supreme Court has held: "Even if there were some doubt as to the correct construction of the statute, the doubt should be resolved in favor of the alien." Immigration and Naturalization Service v. Errico, 385 U.S. 214, 225 (1966). There is no basis for reading into the statute a new technical requirement that waiver of deportation for fraud may only relate to the subject's most recent entry.

Moreover, the Board of Immigration Appeals and the courts have consistently held that the benefits of §241(f) are not restricted to situations in which fraud or misrepresentation at entry is specifically charged as the ground for deportability. The immigration judge below erred when he denied Mr. Frias's motion to dismiss deportation proceedings and gave as his reason that the ground of deportation charged did not relate to the most recent time of entry, but instead charge him as deportable under

Section 241(a)(5) because of his subsequent conviction under 18 U.S.C. §1546 for a prior fraudulent entry. That conviction resulted directly and exclusively from the fraud committed at the time of the 1968 entry. The Board of Immigration Appeals has explicitly held that the factual substance of the charge, not the particular subsection chosen, determines the applicability of §241(f):

[W]e are of the opinion that it was the intent of Congress to save from deportation those aliens who were admissible except for the fact that they had made fraudulent statements regardless of the provision under which their deportation is sought.

Matter of K--, 9 I & N Dec. 585, 589 (B.I.A.1962).

This holding was applied by a special inquiry officer in Matter of Cadiz, rev'd on other grounds, 12 I & N Dec. 560 (B.I.A. 1968), where an alien was convicted under 18 U.S.C. §1546 for having "unlawfully obtained, accepted, and received ... [documentation] ... knowing the same to have been procured by means of false claims and statements and by fraud." He faced deportation under §241(a)(1) for violation of §212(a)(19) and under §241(a)(5) for his 18 U.S.C. §1546 conviction. The special inquiry officer waived both grounds for deportation, noting:

The basis of the lodged charge was clearly the misrepresentation or fraud which is waived under section 241(f) of the Act. The Immigration Service has consistently held that this section also waives any deportation charge resulting directly from such representation, regardless of the statute under which the charge is brought.

Cadiz, supra, 12 I & N Dec. at 562.

The Board looked to "the basic wrong" of fraudulent entry and disregarded multiple charges arising from false statements in Matter of

Y--, 8 I & N Dec. 143 (B.I.A. 1959). The Board sought to "carry out the intent of Congress" and interpreted §241(f)'s predecessor as "describing in general terms aliens whose documentation or entry was procured by fraud or misrepresentation, regardless of the section of the statute under which they were deportable." Id. at 149. The Board even waived a perjury charge in that case. See also Matter of S--, 7 I & N Dec. 715 (B.I.A. 1958), where the Board twice repeated in a fraudulent marriage case:

--It was the intent of Congress to eliminate from consideration the charge that a visa had been obtained by fraud. The section of the law under which the charge is laid is immaterial.

Id. at 716-17.

The Supreme Court summarized with approval the consistent holding of the Board in Immigration and Naturalization Service v. Errico, 385 U.S. 214 (1966). The Court held that §241(f) did apply to a §241(a)(1) charge for quota evasion despite the lack of allegations of fraud or misrepresentation stating:

[A]dministrative authorities have consistently held that §241(f) waives any deportation that results directly from the misrepresentation regardless of the section under which the charge was brought.

Id. at 217.

In the instant case, the fraud upon which Mr. Frias's alleged deportability is based is clearly related to illegal entry, since the fraudulent assumption of identity for which he was convicted was an integral part of his scheme to "evade the immigration laws." 18 U.S.C. §1546. The Service's attempt to avoid §241(f) through use of the §241(a)(5) charge based on his conviction smacks of the governmental charge-shopping

repeatedly condemned by the Board, and also by the Supreme Court in Errico, supra. In this proceeding the Service seeks to deport Mr. Frias for the same fraud and misrepresentation which gained him entry. Such deportation would directly contravene the fundamental, humanitarian purpose of Congress in enacting §241(f) to unite families. Errico, supra, 385 U.S. at 224. The Service ignores the fact that a wife and two young children (all American citizens) will be deprived of their husband and father, and left to depend on public assistance if Mr. Frias is deported. To allow the Service to circumvent the relief guaranteed by §241(f) by mere selection among available charges is to elevate form over substance in a manner contrary to the benevolent intent of Congress and the clear interpretation of the Board of Immigration Appeals and the Supreme Court.

Conclusion

The Board should reverse the erroneous holding of the immigration judge and order deportation proceedings against Mr. Frias dismissed.

II. THE IMMIGRATION JUDGE ERRED IN NOT WITHHOLDING DEPORTATION
PURSUANT TO SECTION 243(h) OF THE IMMIGRATION AND NATIONALITY ACT.

Reyes FRIAS DeLeon will be persecuted because of his past political activity and his present political opinions if he is deported to the Dominican Republic. He presented particularized evidence of his political activities, his widespread reputation in the Dominican Republic, the past harrassment directed at him, his political motivation for departure, and the concrete threat of a future, politically-based prosecution. He clearly met his burden of proof to claim withholding of deportation on the basis of persecution under §243(h) of the Act.

From 1959 to 1968 Mr. Frias was a professional baseball player in the Dominican Republic and in the United States. He was well-known in the Dominican Republic. He supported the election of Juan Bosch to the Presidency of the Dominican Republic in 1963. President Bosch was overthrown by a coup after seven months in office, and Mr. Frias fought in the armed forces seeking to return Bosch to power during the Revolution of 1965, sustaining a bullet wound in the head. After the Revolution was suppressed, he had to leave the country. In 1968 Mr. Frias briefly returned to the Dominican Republic, but was continually harrassed and threatened by the Dominican police. Because of the presence of his American-citizen wife, the short-term protection of a friend, Carlos Conielle, First Secretary of the Dominican State Department, and the payment of \$9,000 in bribes, Mr. Frias managed to avoid arrest and leave the country alive. The presence of Mr. and Mrs. Conielle at the airport was required

to protect Mr. Frias when he left, and Mr. Conielle told him he could guarantee his safety no longer.

Since that time, two specific events have made it concretely clear that the Dominican Republic is still not a safe place for Mr. Frias. On or about February 17, 1973, his commander in the pro-Bosch Revolution, Colonel Francisco Caamano Deno, was executed by the Dominican Police. After Mr. Frias applied for withholding of deportation, he learned of the revival of a nine-year old homicide charge. This charge was originally dismissed in 1965, when Mr. Frias proved he had acted in self-defense during a knife attack. The very fact that Mr. Frias expressed his opposition to the present Dominican Government and police in his application for withholding of deportation has increased his danger of persecution.

The immigration judge erroneously found that Mr. Frias had presented insufficient evidence to sustain the burden of showing "the kind of particularized persecution contemplated by the statute." (Opinion at 4,5) The immigration judge stated that Mr. Frias presented "no specific evidence as to the extent of his involvement in political activity in the Dominican Republic at any time." (Opinion at 2,3) Being a well-known person who fights in a revolution to attempt to return an ousted president to power certainly constitutes political activity.

The immigration judge discounted the harrassment of the police and the necessity of paying \$9000 in bribes during the two weeks Mr. Frias was in the Dominican Republic in 1968. He seemed to suggest that Mr. Frias was escorted in triumph to the airport by an Ambassador and his wife.

Mr. Frias's testimony, however, shows the fear in which he existed during those 14 days, the extraordinary measures he took in pawning jewelry to save his life, and the advice from his one established friend, Mr. Conielle, that it would be very difficult for Mr. Frias to remain longer in the Dominican Republic because the police would kill him. Mr. Frias testified that the only thing that saved his life was the money he then had. He could not pay such bribes now, even for a short period. He has appeared throughout these proceedings in forma pauperis.

Mr. Frias can not possibly obtain documentary proof of his service in the revolutionary army of Juan Bosch. He cannot offer documents showing that his nine-year old dismissed homicide charge has been reopened because the government of the Dominican Republic wishes to punish him for his past political activity and present views. But his own detailed testimony presents credible facts. Such evidence is sufficient. See Matter of Sihasale, 11 I & N Dec. 531 (BIA 1966); cf. Kovac v. INS, 407 F.2d 102 (9th Cir. 1969). The immigration judge accepted as fact the unsupported contentions of the service trial attorney which were based neither on documentary evidence shown in the record nor on testimony from personal knowledge.

The Board of Immigration Appeals held in Matter of Janus & Janek, 12 I & N Dec. 866 (1968), that the standard to be looked to under §243(h) in evaluating all the facts and circumstances was twofold: (1) was the departure of the respondent from the country politically motivated; and (2) are the consequences facing the respondent upon return political in nature? See also Matter of Dunar, Int. Dec. 2192 (BIA 1973).

Mr. Frias left the Dominican Republic twice for political reasons. In 1965 he left as the Revolution was being suppressed, after receiving a head wound fighting for the revolutionary army. In 1968 he left because the police threatened and harassed him for his well-known role in fighting them in the Revolution.

His former commanding officer was killed by these same police during 1973. If Mr. Frias is returned to the Dominican Republic he will face prosecution on a ~~nine~~-year-old homicide charge, formerly dismissed and only recently reopened in the light of his application for withholding of deportation.* This will be a political prosecution. In Kovac v. INS, 407 F.2d 102 (9th Cir. 1969), the Court of Appeals found that a Yugoslav sailor who jumped ship and faced prosecution in Yugoslavia for desertion of his ship would suffer persecution because of his political beliefs, although the charge he faced was criminal in nature.

Conclusion


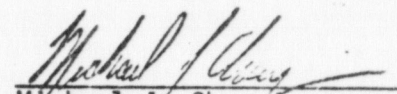
Mr. Frias presented particularized evidence of imminent persecution because of his political beliefs should he be deported to the Dominican Republic. This evidence is sufficient to satisfy an immigration judge who fairly considers the evidence, as contemplated by 8 C.F.R. §242.17(c). If the Board does not dismiss the proceedings on the basis of §241(f) of the Act, then the Board should reverse the erroneous finding of the immigration judge and order that claimant's deportation be withheld.

* It is worth noting that Mr. Frias was allowed to leave the Dominican Republic while these purported charges were pending. A nation does not lightly forget a homicide charge. It is clear that the Dominican Republic does not want Mr. Frias to return as a free citizen when his background and opinions will attract public notice.

In the event that the Board dismisses this appeal, Respondent requests a stay or deferral of the Order of Deportation against him pending appeal to the United States Court of Appeals for the Second Circuit.

THE RESPONDENT

By:


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Michael J. Churgin
His Representatives
127 Wall Street
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FRIAS



United States Department of Justice

Board of Immigration Appeals

Washington, D.C. 20530

File: A18 806 758 - New York

JUL 10 1975

In re: REYES FRIAS-de LEON

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael J. Churgin, Esq. and
Anna M. Dubin, Law Student
127 Wall Street
New Haven, CT 06520

ON BEHALF OF SERVICE: Paul C. Vincent, Esq.
Appellate Trial Attorney

ORAL ARGUMENT: February 26, 1975

CHARGE:

ORDER: Section 241(a)(5), I&N Act (8 U.S.C. 1251
(a)(5)) - Convicted under 18 U.S.C.
1546 (fraud and misuse of visa,
permits and other entry documents)

APPLICATION: Termination of proceedings under section
241(f) of the Immigration and Nationality
Act

This is an appeal from an order of an immigration judge finding the respondent deportable, (denying his application for voluntary departure), denying his application for withholding of deportation under section 243(h) of the Immigration and Nationality Act, and denying his application to terminate the proceedings under section 241(f) of the Immigration and Nationality Act. He was ordered deported to the Dominican Republic.

Our review of the record as well as representations made by counsel during oral argument and in his brief satisfies us that the hearing was fair, that deportability has been established by evidence that is clear

convincing and unequivocal, and that the immigration judge properly applied the pertinent legal principles.

We agree with the immigration judge that the respondent is not saved from deportation by operation of section 241(f) of the Act. The respondent was convicted after his last entry of a violation under 18 U.S.C. 1546 with respect to conduct involved in some prior entry. The false claim to citizenship furnishing the basis for the conviction did not relate, so far as shown, to his presence in the United States at this time. Deportability is predicated solely on the existence of a conviction under 18 U.S.C. 1546, bringing him within the provisions of section 241(a)(5). He cannot invoke the provisions of section 241(f). There is nothing to indicate that his entry into the United States or his obtaining the entry document involved fraud or misrepresentation. He is not charged with being deportable by reason of inadmissibility at entry under section 212(a)(19). Hence, he does not benefit from section 241(f), Reid vs. INS U.S. 95 S. Ct. 1164 (1975). Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

Chairman

LJM/sbj/amk

75-4151

CERTIFICATE OF SERVICE

I hereby certify that I served one copy of the foregoing
Appendix on counsel for respondent, Mary P. McGuire, Special
Assistant United States Attorney, 1 St. Andrews Plaza, New York,
New York 10007, by mail, this 9th day of February, 1976.

Judith M. Mears

Judith M. Mears
Commissioner of the Superior
Court, State of Connecticut



